



New South Wales

Human Tissue Amendment Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Human Tissue Act 1983* as follows:

- (a) to remove provisions of the Act that allow a designated officer of a hospital to authorise the removal of tissue from the body of a deceased person, or the conduct of a non-coronial post-mortem examination, in cases where the deceased person has not given consent during his or her lifetime and the designated officer of a hospital is unable to ascertain the existence or whereabouts of a next of kin of the deceased person,
- (b) to require that tissue removed from the body of a deceased person for the purposes of a post-mortem examination may be used for therapeutic, medical or scientific purposes (other than the purposes of that examination) only with the written consent of the deceased person (given during his or her lifetime) or a senior available next of kin,

- (c) to require that a human body that is being retained for the purposes of a post-mortem examination may be used for other therapeutic, medical or scientific purposes only with the written consent of the deceased person (given during his or her lifetime) or a senior available next of kin,
- (d) to confer enforcement powers in connection with the provisions of that Act,
- (e) to allow regulations to be made with respect to the removal, retention and use of tissue from persons (whether living or deceased), and the use of the bodies of deceased persons for any therapeutic, medical or scientific purposes under an authority under that Act,
- (f) to make consequential amendments, and amendments of a savings or transitional nature.

The Bill also amends the *Coroners Act 1980* to authorise the retention and use, in certain circumstances, of human tissue, or other substances, taken from a human body during a post mortem examination, or other examination or test, ordered by a coroner under that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Human Tissue Act 1983* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Coroners Act 1980* set out in Schedule 2.

Schedule 1 Amendment of Human Tissue Act 1983

Authority to remove tissue or conduct non-coronial post-mortem examination

At present, the *Human Tissue Act 1983* (the *principal Act*) provides that, if the body of a deceased person is at a hospital, a designated officer of the hospital may authorise the removal of tissue from the body of the deceased person or the post-mortem examination of the person's body in circumstances where it appears that the deceased person had not, during the person's lifetime, consented to or expressed an objection to the removal of tissue or a post-mortem examination and the

designated officer is unable to ascertain the existence or whereabouts of a next of kin of the deceased person after making certain inquiries. **Schedule 1 [10]** and **[13]** remove those provisions.

Authority to use tissue removed for purposes of post-mortem examination for other purposes

At present, the principal Act provides that if a post-mortem examination is authorised under the Act, then the use of tissue removed from the body of the deceased person for the purposes of the post-mortem examination for other therapeutic, medical or scientific purposes is also authorised. An order by a coroner under certain provisions of the *Coroners Act 1980* directing the performance of a post-mortem examination is also sufficient authority for the use, for therapeutic, medical or scientific purposes, of tissue removed from the body for the purposes of that post-mortem examination.

Schedule 1 [15] amends those provisions so that an authority under the principal Act, or an order by a coroner, to conduct a post-mortem examination and to remove from the deceased person's body such tissue as is necessary for the purpose of the post-mortem examination does not automatically authorise the use of the tissue for any therapeutic, medical or scientific purposes (other than the purposes of the post-mortem examination). In order to use the tissue for those other purposes, an authority is required under new provisions to be inserted in the principal Act.

The new provisions (see **Schedule 1 [16]**, proposed Division 2 of Part 5) allow a designated officer of a hospital or a forensic institution (an institution at which post-mortem examinations are carried out) to authorise the use of tissue removed for the purposes of a post-mortem examination for other therapeutic, medical or scientific purposes, but only if satisfied that:

- (a) the deceased person (not being a deceased child) gave written consent to that use in his or her lifetime and did not revoke that consent, or
- (b) the deceased person had not, during the person's lifetime, expressed an objection to the use after the person's death of tissue from the person's body for such purposes, a senior available next of kin has given written consent to that use of the tissue, and there is no next of kin of a similar or higher order who objects to the use of the tissue for that purpose.

The authorisation must be given in accordance with the terms of any such written consent.

In addition, if a coroner has jurisdiction to hold an inquest in respect of the death of the person, a coroner's consent to the use of the tissue must also be obtained.

Schedule 1 [18] (proposed section 36 (2A)) makes it an offence to use tissue removed from the body of a deceased person for the purposes of a post-mortem examination for any other purposes, except in accordance with an authority given by a designated officer under the principal Act. The offence will attract a maximum penalty of 40 penalty units (currently \$4,400) or imprisonment for 6 months, or both.

Schedule 1 [19] provides that the offence does not apply in respect of anything authorised by or under the *Coroners Act 1980*, the *Anatomy Act 1977* or any other law.

Schedule 1 [1]–[3], [6], [11], [12] and [14] are consequential amendments.

Authority to use body that is retained for purposes of post-mortem examination for other therapeutic, medical or scientific purposes

Schedule 1 [16] inserts proposed Division 3 of Part 5, which provides for the giving of an authority under the principal Act to use a body that is being retained for the purposes of a post-mortem examination for other therapeutic, medical or scientific purposes.

The provisions allow a designated officer of a hospital or a forensic institution to authorise the use of a deceased person's body for therapeutic, medical or scientific purposes not connected with the post-mortem examination, but only if satisfied that:

- (a) the deceased person (not being a deceased child) gave written consent to that use in his or her lifetime and did not revoke that consent, or
- (b) the deceased person had not, during the person's lifetime, expressed an objection to the use after the person's death of the person's body for such purposes, a senior available next of kin has given written consent to that use, and there is no next of kin of a similar or higher order who objects to the use of the body for that purpose.

The authorisation must be given in accordance with the terms of any such written consent.

In addition, if a coroner has jurisdiction to hold an inquest in respect of the death of the person, a coroner's consent to the use of the body must also be obtained.

Schedule 1 [18] (proposed section 36 (2B)) makes it an offence to use the body of a deceased person that is being retained for a post-mortem examination for any purpose other than the purposes of the post-mortem examination, except in accordance with an authority given by a designated officer under the principal Act. The offence will attract a maximum penalty of 40 penalty units (currently \$4,400) or imprisonment for 6 months, or both. **Schedule 1 [5]** (proposed section 4 (5))

makes it clear that a reference to using the body of a deceased person includes carrying out any procedure on the body of the deceased person or subjecting the body of a deceased person to any experiment, process or research.

Schedule 1 [19] provides that the offence does not apply in respect of anything authorised by or under the *Coroners Act 1980*, the *Anatomy Act 1977* or any other law.

Schedule 1 [1]–[3] and **[6]** are consequential amendments.

Enforcement

Schedule 1 [17] inserts proposed Part 7A, which provides for the enforcement of the principal Act. The provisions allow the Director-General of the Department of Health to appoint inspectors for the purposes of the principal Act. At present, inspectors are appointed under Part 3B of the principal Act and have powers of entry and inspection only in relation to that Part. Inspectors appointed under the new provisions will have power to enter and inspect any premises for the purpose of ascertaining whether or not any of the provisions of the principal Act or any regulations made under the principal Act are being complied with, and certain other powers. It will be an offence to hinder or obstruct an inspector, or to refuse or fail to comply with a requirement made by an inspector. The offence will attract a maximum penalty of 10 penalty units (currently \$1,100) or 3 months imprisonment, or both.

Inspectors will retain the more specific powers currently set out in Part 3B of the principal Act for the purpose of ensuring that that Part is being complied with.

Schedule 1 [4], [7], [8] and **[9]** are consequential amendments, and **Schedule 1 [22]** includes a transitional provision.

Regulation-making powers

Schedule 1 [20] allows regulations to be made under the principal Act for or with respect to the following:

- (a) the making and keeping of records in connection with the removal of tissue from the body of a person (whether living or deceased), including the removal of tissue in the course of medical or surgical treatment, and its retention or use for any purposes,
- (b) the making and keeping of records in connection with the use of any deceased person's body for any therapeutic, medical or scientific purposes under an authority under the principal Act,

- (c) the provision of information to the Director-General of the Department of Health, or to any other specified person concerned in the administration of the principal Act, about any removal, retention or use of tissue from the body of a person, or any use of a deceased person's body for any therapeutic, medical or scientific purposes under an authority under the principal Act.

Schedule 1 [21] and [22] allow savings and transitional regulations to be made.

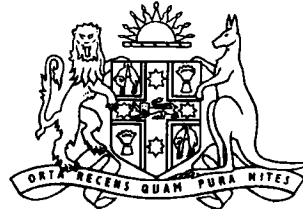
Notes in text

Schedule 1 [5] (proposed section 5 (6)) provides that notes included in the principal Act do not form part of the Act.

Schedule 2 Amendment of Coroners Act 1980

Schedule 2 amends the *Coroners Act 1980* to confirm that an order by a coroner authorising a post mortem examination, or other examination or test, under that Act also authorises:

- (a) the use of any tissue removed for any of the following purposes:
- (i) an investigation by a coroner of the person's death,
 - (ii) an investigation of any offence,
 - (iii) proceedings for any offence, and
- (b) the retention of small samples of certain tissue and use of the tissue for any of the following purposes:
- (i) the exercise by a coroner of his or her functions under that Act,
 - (ii) an investigation of any offence,
 - (iii) any legal proceedings (whether or not in connection with an offence),
 - (iv) a purpose authorised by an authority given under the *Human Tissue Act 1983* that is sufficient authority to use the tissue for that purpose,
 - (v) such other purposes as may be prescribed by the regulations under that Act.



New South Wales

Human Tissue Amendment Bill 2001

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New South Wales

Human Tissue Amendment Bill 2001

No. , 2001

A Bill for

An Act to amend the *Human Tissue Act 1983* to make further provision in connection with post-mortem examinations and the removal, retention and use of tissue from living and deceased persons, and to confer certain enforcement powers; to amend the *Coroners Act 1980* in relation to the retention and use of human tissue; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Human Tissue Amendment Act 2001</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Human Tissue Act 1983 No 164	7
The <i>Human Tissue Act 1983</i> is amended as set out in Schedule 1.	8
4 Amendment of Coroners Act 1980 No 27	9
The <i>Coroners Act 1980</i> is amended as set out in Schedule 2.	10

Schedule 1	Amendment of Human Tissue Act 1983	1
	(Section 3)	2
[1]	Section 4 Definitions	3
	Omit the definition of <i>designated officer</i> from section 4 (1). Insert instead:	4
	<i>designated officer</i> means:	5
	(a) in relation to a hospital, a person appointed for the time being under section 5 (1) (a) to be a designated officer for the hospital, or	6 7 8
	(b) in relation to a forensic institution, a person appointed for the time being under section 5 (3) to be a designated officer for the forensic institution.	9 10 11
[2]	Section 4 (1)	12
	Insert in alphabetical order:	13
	<i>forensic institution</i> means:	14
	(a) an institution that is under the control of a public health organisation (within the meaning of the <i>Health Services Act 1997</i>), or	15 16 17
	(b) an accredited pathology laboratory under the <i>Health Insurance Act 1973</i> of the Commonwealth,	18 19
	at which post-mortem examinations of human bodies are carried out, but does not include a hospital.	20 21
[3]	Section 4 (1), definition of “governing body”	22
	Omit the definition. Insert instead:	23
	<i>governing body</i> means:	24
	(a) in relation to a hospital:	25
	(i) in the case of a public hospital that is controlled by a public health organisation within the meaning of the <i>Health Services Act 1997</i> —the public health organisation, or	26 27 28 29

(ii)	in the case of a public hospital within the meaning of the <i>Health Services Act 1997</i> that is controlled by the Crown (including the Minister or the Health Administration Corporation)—the Crown, or	1 2 3 4 5
(iii)	in the case of a private hospital within the meaning of the <i>Private Hospitals and Day Procedure Centres Act 1988</i> —the licensee of the hospital, or	6 7 8 9
(b)	in relation to a forensic institution:	10
(i)	in the case of a forensic institution that is controlled by a public health organisation within the meaning of the <i>Health Services Act 1997</i> —the public health organisation, or	11 12 13 14
(ii)	in the case of an accredited pathology laboratory under the <i>Health Insurance Act 1973</i> of the Commonwealth—the person in charge of the laboratory (however designated).	15 16 17 18
[4]	Section 4 (1)	19
	Insert in alphabetical order:	20
	<i>inspector</i> means a person appointed as an inspector under Part 7A.	21 22
[5]	Section 4 (5) and (6)	23
	Insert after section 4 (4):	24
(5)	In this Act, a reference to using the body of a deceased person includes a reference to carrying out any procedure on the body of a deceased person or subjecting the body of a deceased person to any experiment, process or research.	25 26 27 28
(6)	Notes included in this Act do not form part of this Act.	29

[6] Section 5 Designated officers and designated specialists	1
Insert after section 5 (2):	2
(3) The governing body of a forensic institution may, by instrument in writing, appoint such persons as the governing body considers necessary to be designated officers for the forensic institution.	3 4 5 6
[7] Section 21F Definitions	7
Omit the definition of <i>inspector</i> from section 21F (2).	8
[8] Section 21P Inspectors	9
Omit the section.	10
[9] Section 21R Obstruction etc of inspectors	11
Omit the section.	12
[10] Section 23 Authority to remove tissue where body of deceased at a hospital	13 14
Omit section 23 (3).	15
[11] Section 27 Effect of authority under this Part	16
Insert after section 27 (2):	17
(3) An authority under this Part does not authorise the use, for therapeutic, medical or scientific purposes, of any tissue removed from the body of a deceased person for the purposes of a post-mortem examination.	18 19 20 21
Note. An authority under Division 2 of Part 5 may be given to authorise the use, for therapeutic, medical or scientific purposes, of any tissue removed for the purposes of a post-mortem examination.	22 23 24
[12] Part 5, Division 1	25
Insert before section 28:	26
Division 1 Authority to conduct post-mortem examinations	27 28

[13] Section 28 Authority for post-mortem examination where body of deceased at a hospital	1 2
Omit section 28 (3).	3
[14] Section 31 Effect of authority under this Division	4
Omit “this Part” from section 31 (1). Insert instead “this Division”.	5
[15] Section 31 (2) and (3)	6
Omit the subsections. Insert instead:	7
(2) An authority under this Division does not authorise any person to use any tissue removed from a person’s body for any therapeutic, medical or scientific purposes other than the purposes of the post-mortem examination.	8 9 10 11
Note. An authority under this Division is not required in respect of anything authorised by or under the <i>Coroners Act 1980</i> (see section 36 (4) of this Act). An authority under Division 2 of Part 5 may be given to authorise the use, for therapeutic, medical or scientific purposes, of any tissue removed for the purposes of a post-mortem examination.	12 13 14 15 16
[16] Part 5, Divisions 2 and 3	17
Insert after section 31:	18
Division 2 Use of tissue removed for post-mortem examination for other purposes	19 20
31A Authority to use tissue removed for post-mortem examination for other purposes	21 22
(1) If a designated officer for a hospital or forensic institution is satisfied, after making such inquiries as are reasonable in the circumstances in relation to a deceased person whose body is being retained at a hospital or forensic institution for the purposes of a post-mortem examination or has been the subject of a post-mortem examination at a hospital or forensic institution, that the person:	23 24 25 26 27 28 29
(a) had, during the person’s lifetime, given his or her consent in writing to the use after the person’s death of tissue from the person’s body for therapeutic, medical or scientific purposes, and	30 31 32 33

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- (b) the consent had not been revoked, 1
the designated officer may, by instrument in writing, authorise 2
the use for therapeutic, medical or scientific purposes of any 3
tissue removed from the body of the deceased person for the 4
purposes of the post-mortem examination in accordance with 5
the terms of the consent. 6
- (2) An authority under subsection (1) is not to be given in respect 7
of a deceased child. 8
- (3) If the designated officer is not satisfied as to the matters 9
referred to in subsection (1), or the deceased person is a 10
deceased child, and the designated officer is satisfied, after 11
making such inquiries as are reasonable in the circumstances in 12
relation to the deceased person, that: 13
- (a) the deceased person had not, during the person's 14
lifetime, expressed an objection to the use after the 15
person's death of tissue from the person's body for 16
therapeutic, medical or scientific purposes, and 17
- (b) a senior available next of kin has given his or her 18
consent in writing to the use of tissue from the body of 19
the deceased person for therapeutic, medical or 20
scientific purposes, and 21
- (c) there is no next of kin of the same or a higher order of 22
the classes in paragraph (a) or (b) of the definition of 23
senior available next of kin in section 4 (1) who 24
objects to the use of tissue for those purposes, 25
- the designated officer may, by instrument in writing, authorise 26
the use for therapeutic, medical or scientific purposes of any 27
tissue removed from the body of the deceased person for the 28
purposes of the post-mortem examination in accordance with 29
the terms of the consent referred to in paragraph (b). 30
- 31B Consent by coroner** 31
- (1) If a coroner has jurisdiction to hold an inquest under the 32
Coroners Act 1980 in respect of the death of a person, a 33
designated officer for a hospital or forensic institution must not 34
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authorise the use of any tissue removed from the person's body under section 31A unless a coroner has given consent to the use of the tissue.	1 2 3
Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.	4 5
(2) A consent by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent.	6 7
(3) The designated officer is to ensure that an authority given under section 31A gives effect to any such conditions.	8 9
(4) A consent by a coroner under this section may be given orally and, if so given, is to be confirmed in writing as soon as practicable.	10 11 12
31C Effect of authority under this Division	13
An authority given by a designated officer under this Division is sufficient authority for a person to use, for therapeutic, medical or scientific purposes, tissue removed from the body of a deceased person for the purposes of a post-mortem examination if:	14 15 16 17 18
(a) the tissue is used in accordance with the terms of the authority, and	19 20
(b) the person who uses the tissue is not the designated officer who gave the authority.	21 22
Note. An authority under this Division is not required in respect of anything authorised by or under the <i>Coroners Act 1980</i> (see section 36 (4) of this Act).	23 24 25
Division 3 Use of body retained for post-mortem examination for other purposes	26 27
31D Authority to use body retained for post-mortem examination for other purposes	28 29
(1) If a designated officer for a hospital or forensic institution is satisfied, after making such inquiries as are reasonable in the circumstances in relation to a deceased person whose body is being retained at a hospital or forensic institution for the purposes of a post-mortem examination, that the person:	30 31 32 33 34

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| (a) | had, during the person's lifetime, given his or her consent in writing to the use after the person's death of the person's body for therapeutic, medical or scientific purposes, and | 1
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| (b) | the consent had not been revoked,
the designated officer may, by instrument in writing, authorise the use of the person's body for therapeutic, medical or scientific purposes in accordance with the terms of the consent. | 5
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| (2) | An authority under subsection (1) is not to be given in respect of a deceased child. | 9
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| (3) | If a designated officer for a hospital or forensic institution is not satisfied as to the matters referred to in subsection (1), or the deceased person is a deceased child, and the designated officer is satisfied, after making such inquiries as are reasonable in the circumstances in relation to the deceased person, that: | 11
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| (a) | the deceased person had not, during the person's lifetime, expressed an objection to the use of the person's body after death for therapeutic, medical or scientific purposes, and | 16
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| (b) | a senior available next of kin has given his or her consent in writing to the use of the deceased person's body for therapeutic, medical or scientific purposes, and | 20
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| (c) | there is no other next of kin of the same or a higher order of the classes in paragraph (a) or (b) of the definition of <i>senior available next of kin</i> in section 4 (1) who objects to the use of the person's body for those purposes,
the designated officer may, by instrument in writing, authorise the use of the body of the deceased person for therapeutic, medical or scientific purposes in accordance with the terms of the consent referred to in paragraph (b). | 23
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31E	Consent by coroner	1
(1)	If a coroner has jurisdiction to hold an inquest under the <i>Coroners Act 1980</i> in respect of the death of a person, a designated officer for a hospital or forensic institution must not authorise the use of the person's body under section 31D unless a coroner has given consent to the use of the body.	2 3 4 5 6
	Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.	7 8
(2)	A consent by a coroner under this section may be expressed to be subject to such conditions as are specified in the consent.	9 10
(3)	The designated officer is to ensure that an authority given under section 31D gives effect to any such conditions.	11 12
(4)	A consent by a coroner under this section may be given orally and, if so given, is to be confirmed in writing as soon as practicable.	13 14 15
31F	Effect of authority under this Division	16
(1)	An authority given by a designated officer under this Division is sufficient authority for a person to use, for therapeutic, medical or scientific purposes, the body of a deceased person that is being retained at a place for the purposes of a post-mortem examination if:	17 18 19 20 21
(a)	the body is used in accordance with the terms of the authority, and	22 23
(b)	the person who uses the body is not the designated officer who gave the authority.	24 25
(2)	An authority given by a designated officer under this Division does not authorise a person:	26 27
(a)	to retain the body of a deceased person for anatomical examination, except in accordance with the <i>Anatomy Act 1977</i> , or	28 29 30
(b)	to retain the body of a deceased person for a longer period than is reasonably necessary for the purposes of the post-mortem examination and making arrangements for the release of the body for burial or other lawful disposal, or	31 32 33 34 35

(c)	to remove tissue from the body of a deceased person for therapeutic, medical or scientific purposes.	1 2
	Note. An authority under this Division is not required in respect of anything authorised by or under the <i>Coroners Act 1980</i> or the <i>Anatomy Act 1977</i> (see section 36 (4) of this Act). An authority to remove tissue from the body of a deceased person for therapeutic, medical or scientific purposes may be given under Part 4 or Division 2 of this Part.	3 4 5 6 7
[17]	Part 7A	8
	Insert after Part 7:	9
	Part 7A Enforcement	10
	33A Appointment of inspectors	11
(1)	The Director-General of the Department of Health may appoint any officer of the Department of Health, or any person whom the Director-General considers suitably qualified for the purpose, to be an inspector for the purposes of this Act.	12 13 14 15
(2)	On appointing an inspector under subsection (1), the Director-General must issue to the inspector a certificate of authority that authorises the inspector to exercise the powers conferred on an inspector by this Act.	16 17 18 19
(3)	A certificate of authority must:	20
(a)	state that it is issued under the <i>Human Tissue Act 1983</i> , and	21 22
(b)	give the name of the person to whom it is issued, and	23
(c)	state the date, if any, on which it expires, and	24
(d)	describe the nature of the powers conferred and the source of the powers.	25 26
	33B Powers of inspectors	27
(1)	An inspector may:	28
(a)	at any reasonable time enter and inspect any premises for the purpose of ascertaining whether or not a provision of this Act, or any regulation made under this Act, is being complied with, and	29 30 31 32

(b)	inspect any records kept on those premises and require any person whom the inspector reasonably believes to have custody or control of those records to produce them for inspection, and	1 2 3 4
(c)	make and take away copies of the whole or any part of a record inspected or produced.	5 6
(2)	This section does not authorise an inspector to enter any part of premises that is being used for residential purposes except with the consent of the occupier.	7 8 9
(3)	This section does not limit the powers conferred on an inspector by section 21Q.	10 11
	Note. Section 21Q confers specific powers on inspectors for the purposes of Part 3B.	12 13
33C	Provisions relating to exercise of powers	14
(1)	A power conferred by this Act to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the inspector proposing to exercise the power:	15 16 17
(a)	is in possession of a certificate of authority, and	18
(b)	gives reasonable notice to the occupier of the premises of the intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and	19 20 21 22
(c)	exercises the power at a reasonable time, unless it is being exercised in an emergency, and	23 24
(d)	produces the certificate of authority if required to do so by the occupier of the premises, and	25 26
(e)	uses no more force than is reasonably necessary to effect the entry or make the inspection.	27 28
(2)	If damage is caused by an inspector exercising a power to enter premises, a reasonable amount of compensation is recoverable as a debt owed by the Crown to the owner of the premises unless the occupier obstructed the exercise of the power.	29 30 31 32

33D	Obstruction of inspector	1
	(1) A person who:	2
	(a) hinders or obstructs an inspector in the exercise of any of the powers conferred by this Act, or	3 4
	(b) fails or refuses to comply with a requirement made under this Part,	5 6
	is guilty of an offence.	7
	Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.	8 9
	(2) A person is not guilty of an offence under subsection (1) unless:	10 11
	(a) it is established by the prosecutor that the inspector concerned produced at the relevant time the certificate of authority issued to the inspector under this Part, and	12 13 14
	(b) if the offence arises under subsection (1) (a)—it is established by the prosecutor that the person was informed by the inspector concerned, or otherwise knew, that the inspector was empowered to exercise the power to which the offence relates, and	15 16 17 18 19
	(c) if the offence arises under subsection (1) (b)—it is established by the prosecutor that the inspector concerned warned the person that a failure or refusal to comply with the requirement was an offence.	20 21 22 23
[18]	Section 36 Offences	24
	Insert after section 36 (2):	25
	(2A) A person must not use any tissue that is removed from the body of a deceased person for the purposes of a post-mortem examination for any purpose (other than the purposes of that examination) except in accordance with an authority that is, under this Act, sufficient authority for the firstmentioned person to use the tissue for that purpose.	26 27 28 29 30 31
	Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.	32 33

(2B) A person must not use the body of a deceased person that is being retained at a place for the purposes of a post-mortem examination for any purpose (other than the purposes of that examination) except in accordance with an authority that is, under this Act, sufficient authority for the firstmentioned person to use the body for that purpose.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

[19] Section 36 (4) 9

Omit the subsection. Insert instead: 10

(4) Subsections (1), (2), (2A) and (2B) do not apply to or in respect of anything authorised by or under: 11

(a) the *Coroners Act 1980*, or 12

(b) the *Anatomy Act 1977*, or 13

(c) any other law. 14

[20] Section 39 Regulations 16

Insert after section 39 (1): 17

(1A) In particular, the regulations may make provision for or with respect to the following: 18

(a) the making and keeping of records in connection with the removal of tissue from the body of a person (whether living or deceased), including the removal of tissue in the course of medical or surgical treatment, and the retention or use of the tissue for any purposes, 19

(b) the making and keeping of records in connection with the use of any deceased person's body for any therapeutic, medical or scientific purposes under an authority under this Act, 20

(c) the provision of information to the Director-General of the Department of Health, or to any other specified person concerned in the administration of this Act, about any removal, retention or use of tissue from the body of a person, or any use of a deceased person's body for any therapeutic, medical or scientific purposes under an authority under this Act. 21

[21] Section 40	1
Insert after section 39:	2
40 Savings, transitional and other provisions	3
Schedule 1 has effect.	4
[22] Schedule 1	5
Insert after section 39:	6
Schedule 1 Savings, transitional and other provisions	7
	8
(Section 40)	9
 Part 1 Preliminary	 10
1 Regulations	11
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	12
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	14
<i>Human Tissue Amendment Act 2001</i>	15
(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	16
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(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	19
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	21
(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	22
	23
	24
(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	25
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Part 2 Provisions consequent on enactment of 1
Human Tissue Amendment Act 2001 2

2 Appointment of inspectors 3

An inspector appointed under section 21P before its repeal by 4
the *Human Tissue Amendment Act 2001* and whose 5
appointment was in force under that section immediately before 6
that repeal is taken to have been appointed under section 33A. 7

Schedule 2	Amendment of Coroners Act 1980	1
	(Section 4)	2
Section 48AA		3
Insert after section 48A:		4
48AA	Retention and use of human tissue	5
(1)	An order for a post mortem examination, or other examination or test, under section 48 or 49 is taken to authorise the use of any tissue removed from the body of the person during the post mortem examination, or other examination or test, for any of the following purposes:	6
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	(a) an investigation by a coroner of the person's death,	11
	(b) an investigation of any offence,	12
	(c) proceedings for any offence.	13
(2)	Such an order is also taken to authorise the following:	14
	(a) the retention of small samples of any of the following tissue removed from the body of the person during the post mortem examination, or other examination or test:	15
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		17
	(i) bodily fluid,	18
	(ii) skin, hair and nails,	19
	(iii) any other tissue retained in the form of a tissue slide or tissue block prepared to enable microscopic examination of the tissue,	20
		21
		22
	(iv) such tissue as may be directed in writing by a coroner in any particular case,	23
		24
	(b) the use of any sample retained under paragraph (a) for any of the following purposes:	25
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		27
		28
	(i) the exercise by a coroner of his or her functions under this Act,	28
	(ii) an investigation of any offence,	29
	(iii) any legal proceedings (whether or not in connection with an offence),	30
		31
	(iv) a purpose authorised by an authority given under the <i>Human Tissue Act 1983</i> that is sufficient authority to use the tissue for that purpose,	32
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		34

Human Tissue Amendment Bill 2001

Schedule 2 Amendment of Coroners Act 1980

- (v) such other purposes as may be prescribed by the regulations. 1
2
- (3) This section does not limit the rights of a coroner under section 24 and does not affect anything authorised by or under any other law. 3
4
5
- (4) In this section: 6
 - tissue* includes an organ, or part, of a human body and a substance extracted from, or from a part of, a human body (including bodily fluid). 7
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